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09/546,966	04/11/2000	David T. Pollock	ENDOV-51639	4186
24201	7590	03/23/2006	EXAMINER	
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3734	

DATE MAILED: 03/23/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/546,966  
Filing Date: April 11, 2000  
Appellant(s): POLLOCK, DAVID T.

**MAILED**

**MAR 23 2006**

**Group 3700**

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John V. Hanley  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/23/2005 appealing from the Office action mailed 6/23/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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**(7) Claims Appendix**

A substantially correct copy of appealed claims 1-3, 5-10, 12-15, 17-18, 20, 22-23, 36-39 appears on pages 11-14 of the Appendix to the appellant's brief. The minor errors are as follows: after final rejection (6/23/2005) amended claim 6 as presented in the Appendix has not been entered.

**(8) Evidence Relied Upon**

6,245,101	Drasler et al	6-2001
5,617,878	Taheri	4-1997

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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2. Claims 1-3, 5, 7-9, 12-15, 17, 20, 22, 36 and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by DRASLER et al (6,245,101).

As to claims 1-3, 5, 7-9, and 12-15, DRASLER (Fig. 5, 28) discloses a medical apparatus in a hollow cylinder configuration with open cells formed by longitudinal members or circumferentially spaced beams 10, which join at merge sections/connection points 100 as recited in the claims. DRASLER medical apparatus meets all structural limitations as recited in the claims because at least a pair of adjacent longitudinal members 10 each has a circumferential width 105 less than a radial thickness 115 (Fig. 5).

As to claims 17, 20 and 22, beams 10 are disposed on a curved surface of a cylindrical/tubular body of stent 5 are therefore mostly curved through out the lengths and the device is substantially maintained in an static equilibrium condition, in which condition the beams are substantially free from stress concentration.

As to claim 36, two longitudinally connected beams 100 define a longitudinal member as recited in the claim.

As to claims 38-39, in general, beams 10 have uniform cross-sections substantially along the lengths.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 10, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over DRASLER et al (6,245,101) in view of TAHERI (5,617,878).

As to claim 10 and 23, DRASLER discloses substantially all structural limitations as recited in the claim, except for a conical shape of the medical device in an expanded condition. TAHERI (Fig. 13; col. 5, lines 25-34) discloses conical stent 40 for an artery having a decreasing diameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make CHUTER device having a conical shape for an artery having a decreasing diameter.

As to claim 37, DRASLER does not disclose a hinge structure having the same profile as that of the pair of the longitudinal struts. However, it is well known to provide a hinge structure having a profile the same as that of a beam of a stent and further it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the beam as recited in the claim because changing the size/dimension of a component as one desires is quite within level of one of ordinary skill in the art. Moreover, Drasler-'101 (Fig. 1A and 5, for example) shows strut 10 has a rectangular cross-section and hinge portion 23 of strut 10 has a rectangular cross-section as well. One of ordinary skill in the art could recognize that a hinge portion 23 of strut 10 of Drasler-'101 has the same profile as that of strut 10 because both strut 10 and hinge portion 23 of strut 10 have rectangular cross sections.

#### **(10) Response to Argument**

The below are responses to corresponding sections of the "Applicants' Arguments" in the previous "Appellant's Brief" (12/23/2005).

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A. Overview: the reference Drasler-6,245,101 includes all structural limitations as recited in the rejected claims. The languages of the claims do not clearly define the present invention over the Drasler-'101 reference.

B. Group I: claims 1-3, 5, 7-10, 36 and 37:

1. 102 (e) Rejection: Drasler et al.

Drasler-'101 (Figs. 1A, 5, for example) teaches a medical apparatus including at least a pair of adjacent generally longitudinal members 10 including hinge sections 23 each having a circumferential width, wherein the radial thickness is greater than the circumferential width as recited in the claims.

2. 103(a) Rejection: Drasler- et al.

Drasler-'101 (Fig. 1A and 5, for example) shows strut 10 has a rectangular cross-section and hinge portion 23 of strut 10 has a rectangular cross-section as well. One of ordinary skill in the art could recognize that a hinge portion 23 of strut 10 of Drasler-'101 has the same profile as that of strut 10 because both strut 10 and hinge portion 23 of strut 10 have rectangular cross sections.

C. Group II: claims 12-15 and 38:

Drasler-'101 (Figs. 1A, 5, for example) teaches a medical apparatus including circumferential spaced beams 10 including hinge sections 23 each having a circumferential width, wherein the radial thickness is greater than the circumferential width as recited in the claims. Moreover, each of struts 10 has a generally uniform cross-section at least along a

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major portion of the struts' length. Notice that the claims do not require a uniform cross section along the whole length of the beams/struts 10.

D. Group III: claims 17, 20, 22, 23 and 39:

Because struts/beams 10 including hinge portions 23 are disposed on a continuous curved surface of a cylindrical/tubular body of stent 5 when stent 5 is in an expanded condition, struts/beams 10 must be mostly curved throughout their length. Moreover, each of struts 10 has a generally uniform cross-section at least along a major portion of the struts' length. Notice that the claim does not require a uniform cross section along the whole length of the beams/struts 10.

**(11) Related Proceeding(s) Appendix**


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

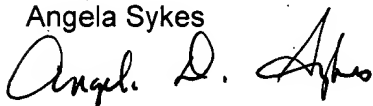
  
03/20/2006

Vy Q. Bui

Primary Examiner, TC 3700

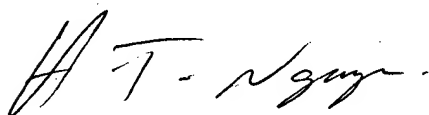
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